IN RE: PETITION FOR SPECIAL HEARING SE/corner Old North Point Rd. and Cypress Avenue 12th Election District 7th Councilmanic District William Gattus, et ux Petitioner

FINDII'S OF FACT AND CONCLUSIONS OF LAW

* * * * * * * * * *

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 88-335-SPH

The Petitioner herein has requested approval of a nonconforming use for a commercial parking lot in the residential zone pursuant to the authority of the Zoning Commissioner under Section 500.7 of the Baltimore County Zoning Regulations, as more particularly described on Petitioner's Exhibit 1.

The Petitioner appeared, testified, and was represented by Louis DePazzo, Esquire. The testimony of the Petitioner was supported and confirmed by Mr. Mullaney, Mr. Cleavey, Mr. Huth , Mr. Cortolillo and Mr. Dixon.

Mr. Thiess was the only Protestant and is the most affected adjoining property owner. His property immediately abutts the existing parking lot on Old North Point Road.

The property, as described on Petitioner's Exhibit 1, is a parking area with a gravel surface approximately 40 ft. by 100 ft. The lot is located on the southeast corner of Old Northpoint Road and Cypress Avenue.

According to the testimony of the Petitioner and the Petitioner's witnesses, the original gravel lot was established for the Colgate Baptist Church approximately 1936 to 1938. The Colgate Baptist Church was located directly across Cypress Avenue from the parking lot on the northwest corner of Cypress Avenue and Old Northpoint Road. The parking lot was primarily used by the church and the adjoining bar and tavern establishment on the other side of Old Northpoint Road. There were also commercial patrons from the grocery

Traces No Comment CRITICAL AREA

1. The Petitioner shall fence the eastern and southern property boundaries of the parking lot with a six foot buffer fence as approved by the Baltimore County Landscape Planner. The Petitioner shall maintain the parking lot and fence in a good state of repair.

- 5 -

cc: Peoples Counsel

store which used the lot on a part time basis. The other primary users of this particular lot were for local residents along Old Northpoint Road who do not have their own driveways or who had no room for additional cars.

The testimony of Mr. Mullaney establishes that he has lived on Old Northpoint Road within 200 feet of the subject lot for approximately 62 years. He testified that the subject lot has been used since 1940 as a parking lot for both the Old Colgate Baptist Church and by the tavern patrons. The lot has also been used as a parking lot for people who live in the surrounding dwelling units because there is no parking on Old Northpoint Road and some of the homes have inadequate onsite parking. Mr. Mullaney, further, testified that to the best of his knowledge, the lot was in use during World War II as a parking lot for the tavern, package goods store and barber shop that was located on Mr. Gattus' site.

Both Mr. Mullaney and the Petitioner testified that the tavern suffered extensive fire damage in August of 1985. That, as a result of this extensive damage, the building was rebuilt and remodeled. This remodeling and restoration project lasted approximately nine (9) months during which time the tavern continued to operate on a part time basis.

The Protestant, Mr. Thiess, testified that he has lived next door to the subject lot, which is pictured in Protestant's Exhibit 1, for eight years. He stated that the tavern was closed, after the fire, for approximately one year and that no tavern vehicles were parked on the subject lot.

Mr. Thiess, also, testified as to the problems that he and his family experience from the tavern patrons parking on the lot. The late night problems caused when the patrons leave creating noise and shining autoheadlights. He, also, testified to problems created by the snow removal procedure used by the Petitioner which has continually damaged the fence on

PETITION FOR SPECIAL HEARING STEETH TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and or Deputy Zoning Commissioner should approve The existing parking lot in a residential zone as a nonconforming use.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon fising of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

		I We do solemnly declar inder the penalties of perju- re the legal owner(s) of thich is the subject of this P	ry, that I we
Contract Purchaser:		Owner(s);	11.5
(Type or Print Name)		iam-Gattus	DATE TO STATE
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City and State	پهرچر Signa	-6.26.23.23.23.24.26.36.66.	
Attorney for Petitioner:	•••		E-20, 450
BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT	No. 45660	Pople din	thone No.
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Commissioner of Baltimore County in R County, on the	y of A	Office Building In Towson,	Raltimore
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	V Zonir	ng Commissioner of Baltimore	County.
Z C.O.—No. 1	(over)		
THATED LENGTH OF HEARING (JZNR: +1	HR •		
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the property belonging to the Protestant and has led to water damage in the Protestant's home. Mr. Thiess testified that it is his desire to have the subject lot fenced so that there is more privacy on his lot and less interference from the noise and dust.

The Court of Special Appeals of Maryland in McKemy v. Baltimore County, Maryland, 39 Md. App 257, 385 A.2d 96 (1978) stated that a nonconforming use should be reviewed in light of the following test. Those four elements of the test as set forth by the Court are:

> "(1) to what extent does the current use of these lots reflect their nature and purpose of the original noncon-

(2) is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind; (3) does the current use have a substantially different

effect upon the neighborhood; (4) is the current use a 'drastic enlargement or exten-

sion of the original nonconforming use."

The testimony, clearly, establishes that a parking lot has existed on the area shown on Petitioner's Exhibit 1. It is a gravel parking lot at the corner of Old Northpoint Road and Cypress Avenue and has been there since approximately 1936. This lot has been used by the parishioners of the Old Colgate Baptist Church which, in more recent years, has been rented to several other Church organizations and ultimately converted to apartments. Likewise, the parking lot has been used by neighboring residents and by patrons of the business establishment owned and operated by William Gittus, the Petitioner, as a tavern. There does not appear to be any evidence that there has been any substantial interruptions in the use of this parking lot and, the lot has

DESCRIPTION

Location on the southeast corner of Old North Point Road and Cypress Avenue and known as lots #45 and #46 as shown on Plat of Eastview, which is recorded in land records of Baltimore County in book 5 page 81. 12th Election District Contuining 4072 Sy. At .

> CENTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

District / 3 74 Date of Posting Posted for: Special marriage Petitioner: 1966 1996 Called Later Called La Location of property: St four Cla NETE & Comments Location of Signes 165034 Cld N M. Rd. 42220 5 12 12 200 d uley ou Proposity of Pede Incorp. Number of Signal

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING The Zoning Commissioner of Bal-timize County, by authority of the Joning Act and Regulate was of Balti more County, will hold a public THIS IS TO CERTIFY, that the annexed advertisement was hearing on the property identified herein in Room 10s of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, published in THE JEFFERSONIAN, a weekly newspaper printed Maryland as follows
Case number 88-38-5PM and published in Towson, Baltimore County, Md., appearing on Pention for Special Hearing SEC or Old North P unt Road and Cypress A nue 12th Election District — 7th Council-Pentioners Wilham Catrus et us DAIETIME. Monday February 29,

THE JEFFERSONIAN,

Publisher

32.18

1948 at 71:00 a m. TOR SNOW DATE, CALL 64 DATE

nconforming use.

2 103 Feb. 11

parking lot in a resider tial some as a

In the event that this Petition is granted, a building permit may be immed within the thirty (30) day ap peal period. The Zoning Commis-numer will, however, encortain any request for a stay of the issuance of

and permit during this period to good cause shown. Such reques

must be in writing and secured in this office by the date of the hearing art above or presented at the hear

J. ROBERT HAINE

Zoning Commissione

existed, continuously, from the time prior to the institution of the Baltimore County Zoning Regulations (B.C.Z.R.) in 1945.

The current lot is used for the parking of both commercial vehicles and residential vehicles. Clearly, the parking of Church vehicles has ceased for more than one year and there is substantial question as to whether or not the lot can now be used to support the neighborhood grocery store. The testimon, clearly, indicates that the Petitioner's father operated a package goods store in conjunction with his barber shop and that the Petitioner has operated a tavern at this location since his father's death, until present. The patrons of all of those business establishments have used the subject parking lot along with and in conjunction with various residential parking from the immediate area. There does not appear to be any substantial difference in the use of this lot since prior to 1945 on through and including the uses to which it is placed at this time. Likewise, the effect upon the community and the neighborhood in general is substantially the same as it has always been and, there does not appear to be any extension and/or enlargement of the operation or use of this parking lot.

Pursuant to the advertising, posting of property, and public hearing on this Petition held, and for the reasons given above, the requested approval

THEREFORE, IT IS ORDERED this 15 day of March 1988 by the Zoning Commissioner of Baltimore County that approval of a nonconforming use for a commercial parking lot in the residential zone, pursuant to Section 500.7 of the B.C.Z.R., be and is hereby GRANTED, subject to the following

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 194-3353 J. Robert Haines

181



March 15, 1988

Louis DePazzo, Esquire 38 South Dundalk Avenue Dundalk, Maryland 21222

Re: Petition for Special Hearing Case No. 88-335-SPH William Guttus, et ux

Dear Mr. DePazzo:

Pursuant to the recent hearing held on the subject case, please be advised that the Petition for Special Hearing has been Granted. If you have any questions, concerning this matter, please do not hesitate to contact this office.

> J. ROBERT HAINES Penn CONING COMMISSIONER

CERTIFICATE OF PUBLICATION OFFICE OF Dundalk Eagle NOTICE OF HEARING The Zaning Commissioner of Belti-more County, by authority of the Zoning Act and Regulations of Baltimore 4 N. Center Place County will hold a public hearing on P. O. Box 8936 the property identified herein in Room 108 of the County Office Building, le-February 12, Dundalk, Md. 21222 cated at 111 W. Chosapsuke Avem in Towson, Maryland as follows: Core number: 88-335-SPN THIS IS TO CERTIFY, that the annexed advertisement of J.Robert Haines in the matter of Zoning Hrgs. - Case #88-335-SPH - P.O. #96301 - Req. #M10767 - 74 lines Potition for Special Hearing SE/Cor fild Harth Point Read and Cyprocs Avenue
12th Election District
7th Councilmanic District was inserted in **The Dundalk Eagle** a weekly news-Politioners: William Cottos, of ex paper published in Baltimore County, Maryland, once a week DATE/THE: MONGAY, FEB. 25, 1988 at 11:86 a.m. successive weeks before the FOR SNOW DATE CALL 494-3301 Special Hearing - The existing 19 88; that is to say, parking lot in a residential zone on a 12th day of February nonconforming use. the same was inserted in the issues of February 11, 1988 granted, a building permit may be inaud within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or pre-Kimbel Publication, Inc. sented at the hearing.

J. ROBERT MAINES 88-335-SPH BALTIMORE COUNTY OFFICE OF PLANNING & ZONING County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204 Your petition has been received and accepted for filing this 10th day of December , 1987. Received by: femes E. Dyer Chairman, Zoning Plans Petitioner Villiam Cattus, et ux Petitioner's Advisory Committee Louis DeParro, Esquire DWI q.

Dwlg.

PLAT for SPECIAL HEARING

for NONCONFORMING USE

LOCATION OF SURROUNDING STRUCTURES ARE APPROXIMATE

WILLIAM + ELEANORA GATTUS

PUBLIC UTILITIES EXIST IN ROAD

12th ELECTION DISTRICT

ZONED D.R. 5.5

| SCALE 1" . 30"

Church

GRAVEL PKG. LOT

CYPRESS AVE

Baltimore County Zoning Commissioner
Office of Planning & Zoning Towson, Maryland 21204 494-3353 J. Robert Haines

Dece by r '4, 1987

Mr. William Gattus 7407 Poplar Avenue Baltimore, Maryland 21224

RE: William Gattus, et ux SE/Corner Old North Point Road and Cypress Avenue Petition for Special Hearing Case No. 88-335-SPH

Dear Mr. Gattus!

Please be advised that $\frac{76.78}{1}$ is due for advertising and posting of the above-referenced property. All advertising and posting fees must be paid prior to the hearing. Do not remove the sign(s) from the property from the time it posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and forward to the Zoning Office, County Office Building, Room 113, Towson, Maryland 21204.

OFFICE BLDG.

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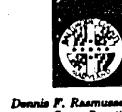
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BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
Secret 100 f 1/2/ MISCELLANEOUS CASH RECEIPT DATE 2/29/69 ACCOUNT 1-01-615-000 cc: Louis Defazzo, Esqui

VALIDATION OR SIGNATURE OF CASHIER

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353 J. Robert Haines

NOTICE OF HEARING



The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Case number: 88-335-SPH Petition for Special Hearing SE/Cor Old North Point Road and Cypress Avenue 12th Election District, 7th Councilmanic District Petitioners: William Gattus, et ux DATE/TIME: MONDAY, 2/29/88 at 11:00 a.m.

Special Hearing - The existing parking lot in a residential zone as a nonconforming use.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Polart Houses J. ROBERT HAINES

Zoning Commissioner of

Baltimore County

Raltimore County Fire Department Towson, Maryland 21204-2586 494-4500

Paul H. Reincke Chad J. Robert Haines Zoning Commissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204



Re: Property Owner: William Gattus, et ux

Location: SE corner O. North Pt. Rd., and Cypress Avenue

Item No.: 181

Zoning Agenda: Meeting of 11/24/87

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

November 25, 1987

() 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at

EXCEEDS the maximum allowed by the Fire Department. () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

() 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

() 6. Site plans are approved, as drawn.

(χ) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Cult | De the | 1-35 [7] Approved: Fire Prevention Buteau Special Inspection Division

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

February 16, 1988

Louis DePazzo, Esquire 38 S. Dundalk Avenue Dundalk, Maryland 21222

RE: Item No. 181 - Case No. 88-335-SPH Petitioner: William Gattus, et ux Petition for Special Hearing

Dear Mr. DePazzo:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above-referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

ances & Dyer /KIB JAMES E. DYER

Zoning Flans Advisory Committee

JED:kkb Enclosures

> cc: Nicholas B. Commodari 3607 Ronview Avenue Baltimore, Maryland 21213

Maryland Department of Transportation State Highway Administration

ZONING LINUS

Re: ZAC Meeting of 11-24-87

December 4, 1987

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204

Attn: Mr. James Dyer

ITEM: #181. Property Owner: William Cattus, et ux Location: SE corner Old North Point Road, Route 20, and Cypress Avenue Existing Zoning: D.R. 5.5 Proposed Zoning: Special Hearing to approve the existing parking log in a residential zone Area: 4072 square feet District: 12th Election District

Dear Mr. Haines:

On review of the submittal of Item #181, the State Highway Administration - Bureau of Engineering Access Permits finds this plan generally acceptable with no access to Maryland Route 20 (North Point Road). However, the site plan must be revised to show an ultimate 60' right of way (30' half section) measured from the centerline of Maryland Route 20.

If you have any questions, please contact Larry Brocato of this office.

> Very truly yours, Creston J. Mills, Jr. Acting Chief Sureau of Engineering Access Permits

LB:maw ec: Mr. J. Ogle

My tele, hone number is (30)

PROTESTANT(S) EXHIBIT ()

Tel stypewriter for impaired Hearing or Speech 383-7555 Baitimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free 707 North Calvert St., Baitimore, Maryland 21203-0717



Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204 December 2, 1987



Dennis F. Rasmussen County Executive

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comment for items number 177, 178, 179, 180, 181 182, and 183.

Very truly yours,

Michael (7)

Michael S. Flanigan
Traffic Engineer Associate II

MSF:sb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines
TO Zoning Commissioner

Date January 14, 1988

P. David Fields
FROM Director of Planning and Zoning

SUBJECT Zoning Petition No. 88-335-SPH

In view of the subject of this petition, this office offers no comment.

P. David Fields per Settouvell P. David Fields Director

PDF:JCH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel

CPS-008

PROTESTANT(S) EXHIBIT (2)

